



# FILING A SMALL CLAIMS CASE IN NEBRASKA

Small claims court provides a prompt and inexpensive way to resolve minor disputes. Legal procedures are held to a minimum and lawyers may not participate. Small claims court is a division of county court and the hearings are conducted by a county judge. Small claims court is limited to civil (non-criminal) actions involving disputes over amounts of money owed, damage to property, or seeking the return of personal property.

This is general information about small claims court. It is not designated to provide specific advice, and may not be totally applicable in any particular case. If you have additional questions about small claims court or your legal rights, you should seek the professional advice of a lawyer.

**Staff of the county court and judges are not permitted to give you additional information or assist any party in small claims beyond the contents of this pamphlet. Court personnel are not permitted to discuss the merits of your case with you and are prohibited from giving you legal advice about your case.**

**Judgments in small claims court may not exceed \$3,500.**

To find the cost for filing a small claims case, check with your court clerk or the Nebraska Judicial Branch Web site. Once you file your paperwork with the court, your case will be assigned a case number. This number must be on all documents filed with the court. There will be additional costs to notify other individuals who are involved in your small claims case.

Being awarded a judgment does not guarantee that you will ever collect money. The court is not responsible for collecting the judgment. If the judgment debtor (the losing party) does not voluntarily pay the judgment to the judgment creditor (the winning party), the judgment creditor may attempt to collect the judgment through an additional court process. For more information on collecting your judgment check with your court clerk for a brochure or the Nebraska Judicial Branch Web site.

## FORMS AND FILING

**Completing the Small Claims form (Form No. CC 4:1):** To start a small claim proceeding you must file a Small Claims form with the clerk of the county court. The form is available at the county court or through the Nebraska Judicial Branch Web site. You may fill-in the form online, write in the information on a form at the court, or you may take it with you and have a lawyer or anyone else help you complete it.

**County:** You must file small claims actions in the county where the defendant or defendant's agent resides or is doing business or in the county in which the cause of action arose. If you file in the wrong court, your case will be dismissed and you will lose the filing fees and prepaid costs.

**Plaintiff:** The person filing the claim is the Plaintiff. If you are filing with your spouse, a child or other person, add their name to the Plaintiff section. If you are the only person filing, use your name alone. You may not file a claim assigned to you by someone else. Only an individual who is directly involved with the transaction may pursue a small claims action.

**Defendant:** The name of the defendant (the person being sued) is entered on the Defendant line. Add names of additional defendants, if there are any, on that same line. The Defendant(s) must be properly served with a copy of the claim. The plaintiff must know the defendant's proper name and whether the defendant is an individual, a corporation, a partnership or other legal entity. If the business you are suing is a corporation, partnership or any other organization, you must identify the person who is authorized to receive this type of paperwork.

A small claim cannot be filed against certain military personnel. For a definition of exempt individuals under the Soldier's Relief Act, check with your local library or the Nebraska Judicial Branch Web site.

If you are unsure if the business is a corporation, you may contact the Secretary of State at 402-471-4079. If the business is a corporation be sure to ask for the name of the registered agent and/or officers.

The plaintiff must provide the defendant's address and must decide whether to have the sheriff serve the notice of the small claim on the defendant or to have it served by certified mail. If the plaintiff fails to properly identify the defendant or fails to obtain proper service on the defendant, the claim may be dismissed and the filing fees forfeited.

Additional note on defendants in small claims cases:

An individual, partnership, corporation, union, association or any other kind of organization or entity can be a plaintiff or a defendant in a small claims action.

An individual who is a party to a small claims action must represent himself or herself. A partnership can be represented by a partner or an employee. A corporation may be represented by an officer or employee of the corporation. A union, association, or other organization may be represented by a member or an employee. You may not be represented by a lawyer in small claims court.

**Description of Claim:** Provide a brief description of why you are suing the person(s). Provide information on the money you feel is owed to you and/or the exact property that you would like returned. Include the date or incident of date range. Add specific dollar amount(s) and reason(s).

**Number of Claims filed:** Except for a merchant who is claiming a loss due to shoplifting, a party is limited to filing no more than two small claims within any calendar week and no more than 10 claims in any calendar year.

**Signing and filing the form:** The claim form must be signed before a clerk, deputy or assistant clerk of the county court, a notary public, a judge, or other person authorized by law to take acknowledgments. It may be filed in person or by mail and must be accompanied by your filing fee. In addition, you will be required to pay for service (delivery) of the claim form by sending it through certified mail or by having the sheriff or process server serve the claim form on the defendant. Information on certified mail service is available on the Judicial Branch Web site or check with the clerk of court for further instructions. If you decide to have the sheriff or process server serve the defendant, you will need to make financial arrangements directly with them. You can recover these costs as part of the judgment if the case is successful.

## **ADDITIONAL INFORMATION ON SMALL CLAIMS CASES IN NEBRASKA**

### **COUNTERCLAIMS AND SETOFFS**

When the defendant receives notice of the small claims filing, he or she may file a "counterclaim" or "setoff" with the court. A counterclaim is a statement by the defendant that he or she is owed money or property by the plaintiff. A setoff is an admission by the defendant that he or she owes some money to the plaintiff, but that the plaintiff also owes the defendant money. Check with your court clerk or the Nebraska Judicial Branch Web site for form number CC 4:2.

If the defendant wishes to file a counterclaim or setoff, the clerk of the county court can provide the proper forms or you can find the form listed above on the Judicial Branch Website. The defendant must provide a brief statement of why the money is owed by the plaintiff. The defendant must file the counterclaim or setoff with the court and have notice served on the plaintiff at least two days prior to the time of trial. If the setoff or counterclaim exceeds the Small Claims Court limit, the case will be transferred to the regular county court docket and set for trial.

## TRANSFER OF CASES FROM SMALL CLAIMS COURT

A defendant in a small claims court action may remove the case from small claims court and have it considered as a regular civil case on the county court docket. The defendant or defendant's attorney must request the transfer at least two days before the hearing time and must pay the difference in fees between the small claims court and the regular docket of county court. When this is completed, the case is automatically transferred by the court; the law does not permit the plaintiff to object to the transfer. After the transfer, both the defendant and the plaintiff may have a lawyer represent them during the trial. A defendant desiring a jury trial must ask for a jury trial at the time the transfer is requested.

## PREPARING YOUR CASE

It is the obligation of the plaintiff on the original claim and the obligation of the defendant on the counterclaim or setoff to persuade the judge that their position and claim is valid. Both parties may bring evidence in the form of documents or witnesses to support their side.

You may simply ask your witness to appear in court and testify. If the person is reluctant or if you are unsure whether the witness will attend the hearing, you may make a written request to the court for a subpoena, which will then be served on the proposed witness and will compel the witness to attend the trial.

A witness fee and sheriff's fees for the service of the subpoena must be paid by the party who wants the witness to testify. If the fee is not paid, the witness is not required to attend the trial and testify. The cost of these fees will be made a part of the court's judgment. The following are examples of evidence you may wish to consider in certain cases:

If your case involves poor workmanship, bring in a witness who is knowledgeable about the type of work in question, who does not have a direct interest in your case, and who can testify as to the standards of proper workmanship. In auto accident cases, copies of the police accident report, repair bills or written estimates and photographs of the damages of the accident scene may be helpful. In cases concerning personal injury, medical bills and photographs of the injured party may be beneficial to the court. In landlord/tenant disputes, a copy of the lease, if there is one, as well as receipts or cancelled checks for rent or deposits, and anything else in writing pertaining to the case should be produced. If there is a question as to damages or the condition of the apartment, witnesses and photographs should be considered as well as repair bills and estimates. In cases involving faulty merchandise, any warranties or guarantees that may be applicable should be presented.

## HOW THE CASE IS HANDLED

Shortly before the time set for your case, advise the county court staff that you are present and ready for trial. They will direct you to the proper courtroom. Although trials in small claims court are generally informal, remember that you are in a court of law and all participants are expected to conduct themselves in a courteous manner. If discourteous conduct or arguments continue after a warning by the judge, the individual may be held in contempt of court and may be fined or jailed.

The plaintiff's evidence is presented first and then the defendant's evidence is presented. Present your case in a brief, orderly fashion. If you wish, you may write it out in advance and read it to the court.

Limit your testimony and evidence to issues directly concerning the case. If the judge asks questions, answer carefully and accurately. Do not argue with the judge, interrupt the other party or witnesses, or make personal attacks on any person. The judge will either decide the case at the end of the trial or will take the case under advisement and inform you later of the decision.

## SETTLEMENT OF CASES

In most cases, neither party is one hundred percent right or wrong. You are encouraged to try to settle your case before trial. If a settlement is agreed to, the parties should notify the court prior to the time set for trial and the case will be dismissed or a judgment entered according to your agreement. For the protection of all participants, the notice of settlement and request for dismissal should be in writing. Filing fees are not refundable.

## MEDIATION CENTER ASSISTANCE

Nebraska has six (6) court-approved mediation centers located throughout the state to assist individuals with settling disputes outside of the court system. If you would like to try mediation in your small claims case, contact a center near you. Check with your court clerk for a referral or the Nebraska Judicial Branch Web site under the 'Mediation' button. In some cases mediation is offered before the case is heard by a judge. Court staff will inform you if this option is available in your county.

## DEFAULT JUDGMENT

If the defendant chooses not to appear at the time and place set for hearing and does not request or receive a continuance; the court may, after hearing the plaintiff's evidence, award a default judgment to the plaintiff without the defendant being present.

## CONTINUANCES

A continuance (moving the trial to a later date) will be allowed only for good reason. The local court staff can advise you about the judge's policy concerning continuances. Generally, the closer to trial date a continuance is requested the more compelling a reason must be for the court to consider the application.

## ADDITIONAL INFORMATION

Information regarding collecting money in a small claims case and appealing a small claims case can be found online or through the county court.

## GLOSSARY OF SMALL CLAIMS TERMINOLOGY

- **Continuance** -- Postponement of a hearing to a later date.
- **Execution** -- An order by the court directing the sheriff to seize the judgment debtor's property, sell it and apply the money to the judgment against the debtor.
- **Garnishment** -- A proceeding to obtain property, wages or money owed to the judgment debtor by a third person and apply it to the amount owed the judgment creditor.
- **Judgment** -- The official decision or order of the court.
- **Judgment Creditor** -- The person for whom the judgment is entered; the person who wins the lawsuit.
- **Judgment Debtor** -- The person against whom the judgment is entered; the person who loses the lawsuit.